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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/766,866 | 01/30/2004 | Jean-Louis Gueret | 118322 | 3899 |
| 25944 | 7590 | 09/28/2006 | EXAMINER | |
| OLIFF & BERRIDGE, PLC P.O. BOX 19928 ALEXANDRIA, VA 22320 | | | | WALCZAK, DAVID J |
| ART UNIT | | PAPER NUMBER | | |
| | | 3751 | | |

DATE MAILED: 09/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|------------------------------|--------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/766,866 | GUERET, JEAN-LOUIS |
| | Examiner David J. Walczak | Art Unit 3751 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 19 September 2006.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-38 is/are pending in the application.
 - 4a) Of the above claim(s) 2,3,8,9,17,29 and 30 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,4-7,10-16,18-28 and 31-38 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____. |

Response to Amendment

It is initially noted that the amendment filed 9/19/06 includes incorrect status identifiers for a number of the claims, i.e., claims 2, 3, 8, 9, 17, 29 and 30 should include the status identifier “withdrawn” (as opposed to “original”) as these claims have been withdrawn from further consideration per the restriction requirement mailed 8/31/05.

Any response to this letter should include a new set of claims having the correct status identifiers.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 4-7, 10-16, 18-28 and 31-36 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Buckley et al. (hereinafter Buckley) in view of Drozd, Jr. (hereinafter Drozd). In regard to claim 1, Buckley discloses a device comprised of a flask 10 containing “at least one of a cosmetic and care product” (see column 2, lines 6-7) and having a threaded neck 14 and an applicator having a stem 21', 22' (see Figure 7), an applicator element 12' disposed at the first end of the stem and a closure cap 11 supporting the second end of the stem wherein the cap includes a threaded portion for engagement with the neck 14. Although the Buckley reference does not disclose a ring

releasably connected to the threaded portion and arranged to remain secured to the neck during removal of the applicator, attention is directed to the Drozd reference, which discloses another flask and cap arrangement wherein a ring 16a (see Figures 8-10) is releasably connected to the threaded portion of the cap 12 and will remain secured to the neck of the flask when the cap is removed in order to enable a user to determine whether or not the cap has been previously removed. Further, the ring occupies "substantially" the same axial position before and after separation, i.e., when compared to the length of the neck and container, the ring remains in "substantially" the same position. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the structure of the flask neck and ring taught by Drozd onto the Buckley device in order to enable a user to determine whether or not the device has previously been open. In regard to claim 4, the ring has a first portion 52 in relief that enables the ring to be snap-fastened onto a second portion 54 in relief on the neck (see column 7, lines 12-18). In regard to claim 5, the second portion in relief includes an annular bead 54 and the first portion in relief comprises teeth 52. In regard to claim 6, the ring and cap disclosed by Drozd are formed by molding plastic (as evidenced by the cross-hatching used in the drawings and column 4, lines 36-39). In regard to claim 7, the ring is connected to the threaded portion by a breakable bridge 14a. In regard to claims 10-12 and 16, the neck includes a first anti-rotation device 44a in the form of a ramp and the ring includes a second anti-rotation device 28a in the form of a ramp wherein the anti-rotation devices operate as claimed. In regard to claim 13, the neck in the Buckley device includes a base having a cylindrical surface (located

below the threads). In regard to claim 14, a careful inspection of Figure 1 shows frostoconical surface at the base which flares toward the body of the flask. In regard to claim 15, the flask in the Buckley device has a shoulder at the base of the neck. In regard to claims 18 and 19, the flask in the Buckley device can be made from glass or plastic (see column 1, lines 48-52). In regard to claims 20-22, 24, 25, 27 and 28, although the Buckley reference does not disclose the capacity of the flask or the dimensions of the neck, stem and applicator brush 12', at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to design the flask to have the claimed capacity and the neck, stem and applicator to have the claimed dimensions, depending on the needs of the user. In regard to claim 23, the stem is visible when the applicator is withdrawn and viewed as claimed (see Figure 7). In regard to claim 26, the flask contains a substance to be applied to nails (see column 2, lines 3-7). In regard to claims 31-36 the method as claimed is inherent in the operation of the device discussed *supra*.

Claims 1, 4-7, 10-16, 18-28 and 31-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buckley in view of Yasada. In regard to claim 1, Buckley discloses a device comprised of a flask 10 containing "at least one of a cosmetic and care product" (see column 2, lines 6-7) and having a threaded neck 14 and an applicator having a stem 21', 22' (see Figure 7), an applicator element 12' disposed at the first end of the stem and a closure cap 11 supporting the second end of the stem wherein the cap includes a threaded portion for engagement with the neck 14. Although the Buckley reference does not disclose a ring releasably connected to the threaded

portion and arranged to remain secured to the neck during removal of the applicator, attention is directed to the Yasada reference, which discloses another flask and cap arrangement wherein a ring 24 is releasably connected to the threaded portion of the cap 16 and will remain secured to the neck of the flask when the cap is removed in order to enable a user to determine whether or not the cap has been previously removed. Further, due to element 12 the ring occupies substantially the same axial position before and after separation. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the structure of the flask neck and ring taught by Yasada onto the Buckley device in order to enable a user to determine whether or not the device has previously been open. In regard to claim 4, the ring has a first portion 34 in relief that enables the ring to be snap-fastened onto a second portion 10 in relief on the neck. In regard to claim 5, the second portion in relief includes an annular bead 10 and the first portion in relief comprises teeth 34. In regard to claim 6, the ring and cap disclosed by Drozd are formed by molding plastic (as evidenced by the cross-hatching used in the drawings and column 3, lines 64-66). In regard to claim 7, the ring is connected to the threaded portion by a breakable bridge 28. In regard to claims 10-12 and 16, the neck includes a first anti-rotation device 34 in the form of a ramp and the ring includes a second anti-rotation device 38 in the form of a ramp wherein the anti-rotation devices operate as claimed. In regard to claim 13, the neck in the Buckley device includes a base having a cylindrical surface (located below the threads). In regard to claim 14, a careful inspection of Figure 1 shows frostoconical surface at the base which flares toward the body of the flask. In regard to claim 15, the

flask in the Buckley device has a shoulder at the base of the neck. In regard to claims 18 and 19, the flask in the Buckley device can be made from glass or plastic (see column 1, lines 48-52). In regard to claims 20-22, 24, 25, 27 and 28, although the Buckley reference does not disclose the capacity of the flask or the dimensions of the neck, stem and applicator brush 12', at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to design the flask to have the claimed capacity and the neck, stem and applicator to have the claimed dimensions, depending on the needs of the user. In regard to claim 23, the stem is visible when the applicator is withdrawn and viewed as claimed (see Figure 7). In regard to claim 26, the flask contains a substance to be applied to nails (see column 2, lines 3-7). In regard to claims 31-36 the method as claimed is inherent in the operation of the device discussed *supra*. In regard to claim 37, the ring extends axially until a base 12 of the neck before separation. In regard to claim 38, the ring is wedged between element 10 and 12 and thereby "axially fixed" on the neck after separation.

Response to Arguments

Applicant's arguments filed 9/8/06 have been fully considered but they are not persuasive. In regard to claim 1, the Applicant contends that the Drozd reference is no longer applicable since the ring thereon does not occupy the same axial position before and after separation, however, claim 1 merely recites that the ring remains in "substantially" the same position. As discussed above, the ring in the Drozd device, despite a slight axial shift after separation, remains in "substantially" the same position.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



David J. Walczak
Primary Examiner
Art Unit 3751

DJW
9/23/06